

REMARKS

Status of case

Claims 1-5 and 8-41 are currently pending in this case.

Claims 1-5 and 8-26:

Claims 1-5 and 8-41 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,343,277 (Gaus et al.) in view of U.S. Patent 6,047,274 (Johnson et al.) and “CellNet Data Systems” web site content of April 28, 1998.

Independent claim 1 recites determining the clearing price after dispatch of services. See “calculating a clearing price for the dispatched market services”. The Office Action states that the Gaus reference (U.S. Patent No. 6,343,277) teaches determining the clearing price after dispatch of services for two reasons. First, the Office Action states that the “reasoning behind the argument by the applicant is that the determination of price is changing at the time or after dispatch of services. It is known in the art that his [sic] types of contracts are called futures.” Applicants respectfully disagree. A futures contract is not a contract which determines a clearing price after dispatch of services. Rather, a futures contract is a “standardized, transferable, exchange-traded contract that requires delivery of a commodity, bond, currency, or stock index, at a specified price, **on a specified future date.**” *See* investorwords.com, definition futures contract (emphasis added) (enclosed). Therefore, a futures contact does not determine the actual price after dispatch of the services. Rather, the price is already specified by the contract, and delivery of the security (commodity, bond, currency, stock index, etc.) is delivered at the specified future date.

Second, the Office Action states that the Gaus reference “teaches the fact that a price can be changed based on conditions of the actual dispatch time.” The Office Action cites column 2, lines 38-45, column 6, lines 21-38 and column 7, lines 12-25. None of these excerpts, or any other portion of the Gaus reference, teaches modifying the clearing price after dispatch of services. Column 2, lines 38-45 teaches in relevant part “allow[ing] for a contract to be formed for a future energy need and does not limit contract formation to the time that the contracted-for product is required.” Thus, Gaus is merely teaching that an energy commodity may be the subject of a futures contract. Column 6, lines 21-38 teaches in relevant part that “suppliers may submit a bid and update it based on changes in market conditions, etc. FIG. 19 illustrates a screen printout of a screen generated by the supplier bid module 72 to allow the user to view

information on each client group with posted buy orders.” Thus, Gaus is merely teaching that a supplier may update an order before the dispatch of services. This is supported by FIG. 19, referenced in the quotation above.

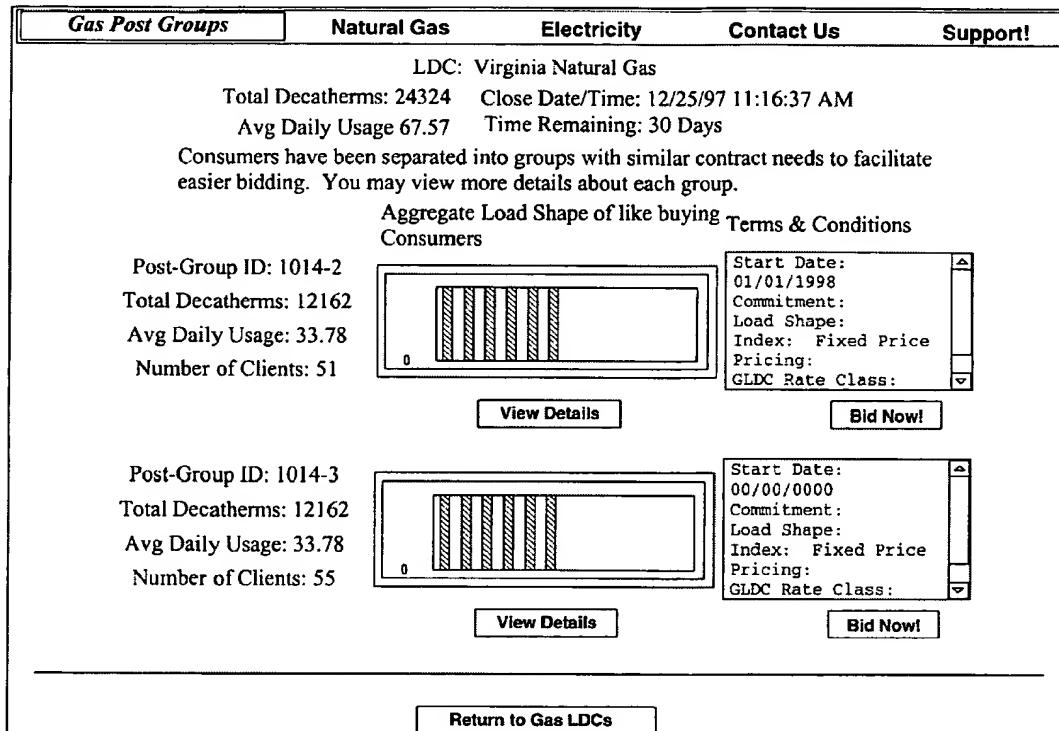


FIG. 19

As shown in FIG. 19, the close date is 12/25/97 and the start date is 01/01/98. Therefore, the clearing price is calculated before, and not after, the dispatch of services. Column 7, lines 12-25, similar to column 2, lines 38-45, merely teaches that an energy commodity may be the subject of a futures contract. There is nothing which teaches that the clearing price is determined after dispatch of services. Therefore, none of the references, including the Gaus reference, teaches or even suggests the invention as claimed in claims 1-5 and 8-26.

Claims 27-41:

Claims 27, 35, 40, and 41 each recite an “economic merit order”. The Office Action states that the economic merit order is the same as the high-low delta disclosed in the Gaus reference. Applicants respectfully disagree. The “high-low” delta merely ranks the bids based on price, and not based on any other criteria. See col. 5, lines 57-60. However, this ranking only based on price is insufficient when two bids are at the same price. If this occurs, the economic merit order related to the bids enables how bids of the same price should be ranked. Further, the

economic merit order determines the dispatch of services. An example of an economic merit order is shown in Table 1 of page 8 of the application, reproduced below:

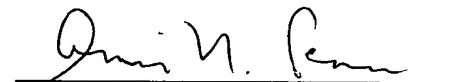
<u>QUANTITY</u>	<u>PRICE</u>	<u>ASSET</u>
100 MWh	\$50/MWh	Gen. Unit C
200 MWh	\$20/MWh	Gen. Unit B
150 MWh	\$15/MWh	Gen. Unit B
50 MWh	\$10/MWh	Gen. Unit C
50 MWh	\$10/MWh	Gen. Unit A
200 MWh	\$0/MWh	Gen. Unit B
100 MWh	\$0/MWh	Gen. Unit A

As shown, the economic merit order enables ranking of various bids, such as the same bids of \$0MWh and \$10MWh. Similarly, Johnson fails to teach or even suggest any use of an economic merit order. Therefore, none of the references, including the Gaus reference, teaches or even suggests the invention as claimed in claims 27-41.

SUMMARY

Applicants submit that based on the foregoing remarks, the rejections have been traversed, and that the claims are in condition for allowance. Should there be any remaining formalities, the Examiner is invited to contact the undersigned attorneys for the Applicants via telephone if such communication would expedite this application.

Respectfully submitted,



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futures contract

A standardized, transferable, exchange-traded contract that requires delivery of a commodity, bond, currency, or stock index, at a specified price, on a specified future date. Unlike options, futures convey an obligation to buy. The risk to the holder is unlimited, and because the payoff pattern is symmetrical, the risk to the seller is unlimited as well. Dollars lost and gained by each party on a futures contract are equal and opposite. In other words, futures trading is a zero-sum game. Futures contracts are forward contracts, meaning they represent a pledge to make a certain transaction at a future date. The exchange of assets occurs on the date specified in the contract. Futures are distinguished from generic forward contracts in that they contain standardized terms, trade on a formal exchange, are regulated by overseeing agencies, and are guaranteed by clearinghouses. Also, in order to insure that payment will occur, futures have a margin requirement that must be settled daily. Finally, by making an offsetting trade, taking delivery of goods, or arranging for an exchange of goods, futures contracts can be closed. Hedgers often trade futures for the purpose of keeping price risk in check. also called futures.

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